

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

MIGUEL GUTIERREZ-PIZANO,

8:09CV45

Petitioner,

v.

**MEMORANDUM
AND ORDER**

FRED BRITTEN,

Respondent.

This matter is before the court on the Petitioner's Motion for Leave to Proceed in Forma Pauperis. (Filing No. [2](#).) The court has carefully reviewed the Petition for Writ of Habeas Corpus filed in this case (filing no. [1](#)) and finds that it should be dismissed for the reasons set forth below.

The Petitioner filed a Petition for Writ of Habeas Corpus on November 3, 2008, in this court. *See Gutierrez-Pizano v. Britten*, Case Number 8:08CV494. The Petitioner failed to sign the Petition in that matter. (Case No. 8:08CV494, Filing No. [1](#).) On December 30, 2008, the court ordered him to submit a signed Petition. (Case No. 8:08CV494, Filing No. [12](#).) On February 2, 2009, the Petitioner instead filed a separate Petition for Writ of Habeas Corpus in this case. (Filing No. [1](#).) The Petition here is identical to that filed in Case Number 8:08CV494 (case number 8:08CV494, filing no. [1](#)), except the Petition was signed and typewritten. The court finds that the Petition for Writ of Habeas Corpus in this matter should be filed in Case Number 8:08CV494 as an Amended Petition and that this matter should be dismissed because it is duplicative.

IT IS THEREFORE ORDERED that:

1. The Petition for Writ of Habeas Corpus (filing no. [1](#)) is dismissed without prejudice to reassertion in Case No. 8:08CV494.

2. The Clerk of the court is directed to file the Petition for Writ of Habeas Corpus dismissed by this Memorandum and Order (filing no. [1](#)) as the Petitioner's Amended Petition for Writ of Habeas Corpus in Case Number 8:08CV494.

3. The Clerk of the court is directed to mail copies of this Memorandum and Order and the Amended Petition for Writ of Habeas Corpus in Case Number 8:08CV494 to Respondent and the Nebraska Attorney General by regular first class mail.

4. The Petitioner's Motion for Leave to Proceed in Forma Pauperis (filing no. [2](#)) is denied as moot.

5. A separate Judgment will be entered in accordance with this Memorandum and Order.

Dated March 10, 2009.

BY THE COURT

s/ Warren K. Urbom
United States Senior District Judge